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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PULSE~LINK INCORPORATED, Plaintiff, v. TZERO TECHNOLOGIES INCORPORATED, Defendant.	**CASE NO. 07 CV 2156 L (AJB)** **JOINT RULE 26(F) REPORT AND JOINT DISCOVERY PLAN** **[LOCAL RULE 26.1]** **DATE: MARCH 3, 2008** **HON. ANTHONY J. BATTAGLIA**
AND RELATED CROSS ACTION.	

TO: The Honorable Anthony J. Battaglia:

Due to the holiday on February 18, 2008, on February 19, 2008, counsel for Plaintiff Pulse~LINK Incorporated and counsel for Defendant Tzero Technologies, Incorporated conferred telephonically pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and the ENE Scheduling Order. The following summarizes the parties' views of the matters required by Rule 26(f), Local Rule 26.1 and the Patent Local Rules.

Factual Summary

Plaintiff Pulse~LINK Incorporated ("Pulse~LINK") alleges that Defendant Tzero Technologies, Incorporated ("Tzero") has and continues to willfully infringe Pulse~LINK's Patent Nos. 6,895,034 and 7,099,368 regarding technology for Ultra-Wideband communications through a wired medium. Tzero denies infringement of Pulse~LINK's Patent Nos. 6,895,034 and 7,099,368 (collectively, the "Patents-In-Suit"). Tzero also contends that the Patents-In-Suit are invalid.

The complaint was filed on November 9, 2007 with the Court. Defendant Tzero answered the complaint on January 2, 2008 with multiple affirmative defenses and a counterclaim with two counts for declaratory relief. Plaintiff Pulse~LINK replied to Defendant's counterclaims on January 18, 2008. On February 19, 2008, counsel held a telephonic conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure to discuss the case. The parties have not yet discussed potential settlement of this case. An Early Neutral Evaluation/Initial Case Management Conference is scheduled for March 10, 2008, before the Honorable Anthony J. Battaglia.

Principal Issues Of The Case

The principal issues in this case are: (1) whether Defendant Tzero infringes the Patents-In-Suit; (2) whether Defendant Tzero contributes to and/or induces others to infringe the Patents-In-Suit; (3) whether Defendant Tzero's infringement of the Patents-In-Suit was willful; (4) whether the Patents-In-Suit are invalid or otherwise do not meet the requirements of 35 U.S.C. §§ 102, 103, and/or 112; (5) whether Plaintiff has complied with the requirements of 35 U.S.C. § 287; and (6) the appropriate damages, judgment, and/or injunctive relief, if any, with regard to the above claims.

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Initial Disclosures

The parties have discussed the exchange of the Rule 26(a) disclosures, and have agreed to exchange initial disclosures by March 4, 2008. The parties have agreed to jointly prepare and submit to the Court a Stipulated Protective Order that will facilitate disclosures under Rule 26 and the discovery process.

Modifications to the Patent Local Rule Deadlines

Below is a list outlining what the parties believe may be the deadlines under the Patent Local Rules for specific disclosures required for patent cases. Pursuant to the Patent Local Rules, the deadline for the Claim Construction Hearing would normally be on or around September 2, 2008—9 months after Defendant's first appearance in the case on January 2, 2007. Under the parties' proposal below, the Claim Construction Hearing would be held a few weeks later on or around September 30, 2008.

Preliminary Infringement Contentions:	March 25, 2008
Preliminary Invalidity Contentions:	May 27, 2008
Preliminary Claim Construction:	June 10, 2008
Responsive Claim Construction:	June 24, 2008
Joint Claim Construction Statement:	July 8, 2008
Complete Claim Construction Discovery:	August 5, 2008
File Opening Briefs:	August 19, 2008
File Responsive Briefs:	September 2, 2008
Claim Construction Hearing:	September 30, 2008[1]

Discovery Relating to Claim Construction

The parties disagree on whether specific limitations on discovery relating to claim construction are warranted in this case. Defendant proposes that, if desired, depositions of inventors may be conducted before and after the Claim Construction Hearing, with the total time for the depositions of each inventor not to exceed ten hours of on the record time without leave of Court. Defendants believe this approach would optimize the discovery process, and better

[1] Assuming the Court calendars the hearing 28 days after the responsive brief is due.

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addresses the possible need to seek discovery from the inventors on issues that may arise, or whose relevance may be ascertained, until after the claim construction discovery cutoff. Such an approach promotes economy because, if events in discovery and interests of justice require additional inventor deposition testimony after claims construction cutoff, this approach will obviate the need for the parties to petition the Court on a case by case basis as Plaintiff suggests.

Plaintiff does not agree that Defendant's proposal is appropriate. As a matter of efficiency, and convenience to the third-party individuals, Plaintiff proposes that the patent inventor depositions can and should cover all issues of the case and therefore can and should be completed in a single sitting. In the unlikely circumstance that a patent inventor deposition needs to be reopened after the Claim Construction Hearing, Plaintiff is not opposed to either party seeking leave of Court to do so on a case-by-case basis, as long as the other party is permitted the opportunity to oppose the moving party's application to re-open a patent inventor deposition.

Claim Construction Hearing

The parties jointly propose that the Court set aside time at the Claim Construction Hearing for each party to deliver a 30 minute tutorial on the technology at issue presented by counsel or a designated expert for the party. Given the complexity of the technology at issue, Plaintiff proposes that the parties be permitted to present live testimony at the hearing including expert testimony. Defendant disagrees with Plaintiff's proposal because, unlike intrinsic evidence, expert testimony has little probative value in construing claim terms. See, e.g., Phillips v. AWH Corp., 415 F.3d 1303, 1318 (Fed. Cir. 1995) (en banc) ("extrinsic evidence consisting of expert reports and testimony is generated at the time of and for the purpose of litigation and thus can suffer from bias that is not present in intrinsic evidence"), cert. denied, 126 S. Ct. 1332 (2006). However, in the event that the Court would like to entertain expert testimony, Defendant reserves its right to present live testimony at the hearing, including expert testimony.

As to the order of presentation at the hearing, the parties agree that Plaintiff will go first followed by Defendant.

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Discovery Plan

With the exception of the Claim Construction Hearing date, the parties have not been able to agree on the governing schedule. Accordingly, the table below lists each party's proposed deadlines for this case.

Event	**Plaintiff's Proposal**	**Defendant's Proposal**
Claim Construction Hearing:	September 30, 2008	September 30, 2008
Factual Discovery Cut Off:	December 31, 2008	January 16, 2009
Opening Expert Reports:	February 20, 2009	March 27, 2009
Rebuttal Expert Reports:	March 20, 2009	May 29, 2009
Expert Discovery Cut Off:	April 20, 2009	July 31, 2009
Motion Cut Off:	June 1, 2009	September 25, 2009
Pretrial Conference:	August 3, 2009	January 8, 2010
Jury Trial:	September 3, 2009	February 8, 2010

The parties anticipate discovery related to each of the issues identified in the Principal Issues of the Case section of this report.

Modifications to the Federal Rules Regarding Discovery

As a matter of economy, Defendant proposes that the parties be limited to seven (7) depositions in this case. Plaintiff does not agree that Defendant's proposed limitation is appropriate in this case and is therefore opposed to it. Plaintiff proposes that each party may take ten (10) factual depositions and up to three (3) expert depositions. Defendant believes that Plaintiff's proposal for 13 depositions is contrary to the Federal Rules and would be a waste of resources in this action.

The parties agree that communications with testifying experts, including correspondence and drafts of expert reports, shall not be discoverable.

The parties propose to modify the requirements of F.R.C.P. 26(b)(5)(A) as they apply to documents created after the filing of the Complaint. In this regard, the parties propose that to the extent discovery requests call for documents protected by the attorney-client and/or work-product doctrines which were a) created after the filing of the Complaint, and b) involve counsel of record in this case, such documents need not be entered into a privilege log or otherwise described as indicated in F.R.C.P. 26(b)(5)(A). Only privileged or protected documents a) in existence prior to the filing of the Complaint or b) which were not created by or intended for counsel of record need be logged or otherwise described as set forth in F.R.C.P. 26(b)(5)(A).

Finally, the parties have consented to service by email in this case. The parties have furthermore agreed that service via email shall be considered the same as hand service for purposes of calculating deadlines under the Federal Rules of Civil Procedure as long as such email is sent no later than 5:30 P.M. (PST).

Other than the above modifications, neither party believes that any changes to the Federal Rules of Civil Procedure related to discovery would be warranted in this case.

Motion Schedule

The parties contemplate that one or both of them will make one or more motions for summary judgment at the appropriate time.

Additional Matters

Plaintiff Pulse~LINK proposes that the trial in this matter should last 7-10 days. Defendant Tzero, believes that the trial in this matter could be completed in 5 days. In addition, Plaintiff Pulse~LINK proposed that the parties discuss and come to an agreement regarding the possibility of additional parties. Defendant Tzero believes that later discussion of this topic after initial discovery would be more productive for the parties.

DATED: March 3, 2008

Respectfully submitted,

McDERMOTT, WILL & EMERY LLP

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TZERO TECHNOLOGIES INC.

DATED: March 3, 2008

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